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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
FIRST APPEAL No 777 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOR ANSOYABEN FATEHSINH BARIYA
Versus
LALUBHAI VITHALBHAI BARIYA

Appearance:
1. First Appeal No. 777 of 2004
MR MTM HAKIM for the appellant
DS AFF.NOT FILED (N) for Respondent No. 1-2
MS SONAL D VYAS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 26/04/2004

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act' for short), has challenged the judgment and order dated May 12, 2003, passed by the Motor Accident Claims Tribunal (Aux), Vadodara, below application Exh.7 filed by the claimant under Section 140 of the Act in MACP No.2305 of 2000.

2. The Tribunal, while allowing the application under Section 140 of the Act and awarding Rs.25,000/- on the principle of 'no fault liability' along with interest at the rate of 9% per annum from the date of application till realisation, had directed that the amount be deposited by the Insurance Company and the same be invested in the FDR in any nationalized Bank in the name of the Nazir of the District Court, Vadodara, till final disposal of the main claim petition. The Tribunal did not permit the claimant to withdraw the amount awarded under 'no fault liability, which has been challenged by the appellant in this appeal.

3. The interim compensation cannot be withheld and is to be disbursed, as per the principles laid down in the case of Muljibhai A. Harijan vs. United India Insurance Company Limited, reported in 1982 (1) GLR 756 and in the case of Lilaben Udesing Gohel vs. Oriental Insurance Company Limited, reported in 1996 (3) GLR 5 (SC). The Tribunal has lost sight of the above principles laid down by this Court and the Supreme Court in the aforesaid cases.

4. Keeping in mind the above principle, in my view, interest of justice would be served if the appeal is allowed and the following directions are issued.

5. The appellant-original claimant shall file an undertaking before the Tribunal within four weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimants shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

6. On the said undertaking being filed, 50% of the amount awarded shall be permitted to be withdrawn by the claimant without security. The remaining 50% of the amount shall be invested in a Cumulative Fixed Deposit

any nationalized Bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

7. Subject to the observations and directions hereinabove, the appeal is allowed. There shall be no order as to costs. D.S. permitted.

(M.H. Kadri, J.)

(swamy)